Louisiana Law Review

Volume 14 | Number 1
The Work of the Louisiana Supreme Court for the 1952-1953 Term
December 1953

Workmen's Compensation - Death Benefits - Priorities Between Claimants

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and cogently addressed it to the Louisiana Law Institute for consideration.[35] Although it is believed that the better view would be to allow the court to ascertain the existence or non-existence of the intent to dispense with collation from the facts of the particular case, it is thought that Justice Hawthorne should be commended for pointing out the need for legislative clarity.

The *Gomez* decision obviates any beliefs which may have previously existed that there is a blanket exemption of manual gifts from collation. However, there are indications that the court would allow certain manual gifts to be free from collation if the facts and circumstances surrounding the gift would warrant the dispensation. In reaching this conclusion the Supreme Court made a very intensive study which resulted in what is submitted to be one of the court's most scholarly opinions in recent years. To reach this result, Justice Hawthorne seems to have taken cognizance, as he has done on previous occasions,[36] of the shift in wealth from immovable to movable property. Any reason which may have once justified the blanket exemption of manual gifts has disappeared from our modern society. Once again the justices have shown that new wine may fit in an old bottle.

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WORKMEN'S COMPENSATION—DEATH BENEFITS—PRIORITIES BETWEEN CLAIMANTS

Plaintiff employer, invoking the Uniform Declaratory Judgments Act,[1] sought to determine its liability under the Louisiana Employers' Liability Act[2] for the death of an employee in an

35. It is submitted that the court should receive favorable recognition for bringing this situation to the attention of the Law Institute. It is interesting to note that the Livingston committee which drafted the Civil Code of 1825 contemplated that all gaps in the law would be called to the attention of the Legislature for immediate correction. See 1 Louisiana Legal Archives, Preliminary Report of the Code Commissioners LXXXVI, XCII (1937).

36. See Succession of Geagan, 212 La. 574, 599, 33 So. 2d 118, 126 (1947), where Justice Hawthorne remarked, "In modern times, when movable property may and often does constitute the great bulk of the wealth, it appears to be a matter of sufficient importance to warrant the Legislature's giving this provision of our law serious consideration."

1. La. R.S. 1950, 13:4231 et seq. The use here of the Uniform Declaratory Judgments Act is made the subject of another Note at p. 281 of this issue.

2. La. R.S. 1950, 23:1021 et seq.

industrial accident. Co-defendants were the deceased employee's legal widow, and his three illegitimate minor children by another woman. Plaintiff sought to limit compensation to the widow alone, contending that Revised Statutes 23:1232 placed the various dependents in classes and ranked them so that the mere existence of the dependent widow in a superior class precluded the rights of the illegitimate children, classed merely as "other dependents." *Held*, that regardless of the classifications set forth in Revised Statutes 23:1232, the existence of a member of a preferred class does not foreclose the rights of wholly dependent members of the next succeeding class so long as maximum compensation remains unabsorbed. *Caddo Contracting Co. v. Johnson*, 222 La. 796, 64 So. 2d 177 (1953).

A literal interpretation of the language of Revised Statutes 23:1232[3] suggests the conclusion that dependents are ranked, and that a deferred dependent is not entitled to compensation when there is an existing dependent in a preferred class. This interpretation of the statute appears to have been adopted by the courts in early cases dealing with priorities between claimants.[4] In a discussion of this subject Professor Malone points out[5] that the compensation law as a whole indicates a legislative willingness to distribute sixty-five per cent of the employee's wage to needy claimants. The literal application of Revised Statutes 23:1232 operates so as to prevent such a result, allowing the employer (or his insurance carrier) frequently to discharge his obligation by payment of only a part of the sixty-five per cent in cases where one or more claimants is in

3. The reference is to the language of paragraph (7): "If there are neither widow, widower, nor child, then to the father or mother . . ." and paragraph (8): "If there are neither widow, widower, nor child, nor dependent parent . . . then to one brother or sister . . . . If other dependents than those enumerated . . ." to them.

4. Dugas v. Gulf States Utilities Co., 145 So. 376 (La. App. 1933); Brown v. Weber-King Lumber Co., 7 La. App. 444 (1928). The rule was held not to apply in cases where a widow was neither living with nor dependent upon the deceased at the time of his death, so that dependent parents were entitled to compensation. Henderson v. Shreveport, 26 So. 2d 766 (La. App. 1946); Evans v. Big Chain Stores, Inc., 133 So. 487 (La. App. 1931); Bradley v. Swift & Co., 167 La. 249, 119 So. 37 (1928). And in the same situation, where there were no dependent parents, a dependent sister was entitled to compensation. Powell v. Paramount-Richards Theatres, Inc., 22 So. 2d 859 (La. App. 1945). Also, where there existed a non-dependent child of the deceased, other dependents were allowed to claim. Harvey v. Caddo De Soto Cotton Oil Co., Inc., 199 La. 720, 6 So. 2d 747 (1942); Jones v. Dendinger, Inc., 147 So. 732 (La. App. 1933).

5. Malone, Louisiana Workmen's Compensation Law and Practice 402, 403 (1951).

a preferred group. The inequity of this system is magnified where the superior claimant is only partially dependent.

Recent decisions[6] prior to the *Johnson* case indicated dissatisfaction with the earlier court position on priorities between claimants. In *McDonald v. Louisiana, Arkansas & Texas Transportation Co.*,[7] the court of appeal granted compensation to partially dependent parents of the deceased in spite of the existence of a dependent child. Finding it necessary to obviate the provisions of Revised Statutes 23:1232, the court proposed that the text of the compensation act should be considered in its entirety, not merely isolated or selected provisions thereof. The court then pointed to the following language in Revised Statutes 23:1252: ". . . if there are a sufficient number of persons wholly dependent to take up the maximum compensation the death benefit shall be divided equally among them, and persons partially dependent, if any, shall receive no part thereof." From this language the court reasoned that the unquestionable intent of the Legislature was to pay the maximum compensation in the event of the existence of either total or partial dependents, or both; and further, that so long as there exists any remainder of the maximum which is unabsorbed by payments to dependents of one class, it must be distributed among the members of the next succeeding class of dependents.

In *Patin v. T. L. James & Co.*,[8] compensation was claimed by the mother of the deceased, and by a child in the classification of "other dependents." The court of appeal found[9] both the mother and the child to be partially dependent and, without mentioning the *McDonald* case, granted compensation to both on the ground that the class designated as "other dependents" is not a deferred group.[10] On appeal, the Supreme Court found[11] that the mother was partially dependent, but that the child was totally dependent. It did not accept the reasoning advanced earlier by the court of appeal, but granted compensation to both claimants, taking a more restricted view. The

6. Patin v. T. L. James and Company, 218 La. 949, 51 So. 2d 586 (1951); McDonald v. Louisiana, Arkansas & Texas Transportation Co., 28 So. 2d 502 (La. App. 1946); Hamilton v. Consolidated Underwriters, 21 So. 2d 432 (La. App. 1944).

7. 28 So. 2d 502 (La. App. 1946).

8. 218 La. 949, 51 So. 2d 586 (1951).

9. 42 So. 2d 304 (La. App. 1949).

10. This proposition was first advanced in Hamilton v. Consolidated Underwriters, 21 So. 2d 432 (La. App. 1944).

11. 218 La. 949, 51 So. 2d 586 (1951).

Supreme Court relied largely on the previously quoted language of Revised Statutes 23:1252[12] and concluded that the existence of a *partially* dependent member of a preferred class does not preclude the rights of a *wholly* dependent member of a deferred class.

In the instant case the Supreme Court was faced with a problem similar to that presented to the court of appeal in the *McDonald* case, and reached a similar conclusion. Before interpreting Revised Statutes 23:1232, the Supreme Court suggested that all the dependency provisions of the compensation act should be considered together. It then emphasized the provisions of Revised Statutes 23:1252 already referred to,[13] and interpreted this language to mean that compensation should be paid first to the various total dependents *of all classes*, then to partial dependents, if any of the sixty-five per cent maximum remained unabsorbed. Having formulated this interpretation of Revised Statutes 23:1252, the court concluded that the dependent classifications set forth in Revised Statutes 23:1232 could have been intended only as a priority list, and the "exclusion theory" advanced by the plaintiff employer was dismissed as "illogical."[14] It should be noted here that the language of the two statutes can be reconciled. The phrase in Revised Statutes 23:1252, "divided equally among them," can be interpreted to mean divide equally among all the wholly dependent persons *in the same priority classification*, which classifications are defined in Revised Statutes 23:1232. This construction of Revised Statutes 23:1252 would allow effect to be given the express language of Revised Statutes 23:1232 to the end that superior claimants preclude the rights of those deferred.[15]

The court in the principal case relied in part upon the history of the provisions to support its contention. The original act, Act 20 of 1914, contained no preference or exclusion provi-

12. ". . . if there are a sufficient number of persons wholly dependent to take up the maximum compensation, the death benefit shall be divided among them, and persons partially dependent, if any, shall receive no part thereof."

13. Ibid.

14. 222 La. 796, 809, 64 So. 2d 177, 181 (1953).

15. In construing the context of a statute the courts are bound to give effect to it as a whole, and no sentence, clause or word should be construed as unmeaning or as surplusage if a construction can be legitimately found which will give force to and preserve all the words used by the legislature. Post Office Employees Credit Union v. Morris, 183 So. 609 (La. App. 1938); Hibernia Nat. Bank v. Louisiana Tax Comm., 195 La. 43, 196 So. 15 (1940); State v. Sinclair Ref. Co., 195 La. 288, 196 So. 349 (1940).

sions but rather provided that payments should be "divided among" the various total dependents.[16] Act 243 of 1916 established classes by preference and the exclusion language, much the same as we have in the present act,[17] and omitted those provisions of the 1914 act which called for a "dividing" of payments among the dependents. The court conceded in the *Johnson* case that this 1916 act could be construed to contain the exclusion feature urged by plaintiff, but that subsequent revisions in 1922 and 1926 could not be so construed.[18] In Act 43 of 1922 the classes by preference and exclusion provisions created by the 1916 act were preserved,[19] with the exception that brothers and sisters were advanced to the next higher group with parents in the case where only one parent was dependent.[20] The court in the instant case called attention to this difference to support its contention that the 1922 act did not contain the exclusion provision of the 1916 act.[21] It appears on closer examination that the 1922 act and subsequent revisions all contain the exclusion language first adopted in 1916.[22] If this is correct, then the history of the provisions would fail to support the court's conclusion, that is, that under Revised Statutes 23:1232 the existence of a member of a preferred class of dependents does not foreclose the rights of those wholly dependent in the

16. "Payments to such dependents shall be computed and divided among them on the following basis:" La. Act 20 of 1914, § 8(2)(d). The clause further sets forth the proportion of deceased's wage to which each was entitled.

17. "If there be no widow nor widower nor any child, then to the father or mother of the deceased . . . ." La. Act 243 of 1916, § 8(f)(7). "If there be neither widow nor widower nor child nor dependent parent surviving the deceased entitled to compensation, then to the brothers and sisters and other members of the family of the deceased not hereinabove specifically provided for . . . ." La. Act 243 of 1916, § 8(f)(8).

18. 222 La. 796, 808, 64 So. 2d 177, 181 (1953).

19. "If there be neither widow, widower nor child, then to the father and mother of the deceased . . . ." La. Act 43 of 1922, § 8(2)(g). "If there be neither widow, widower nor child, nor dependent parent entitled to compensation, then to the brothers and sisters and other members of the family of the deceased not hereinbefore specifically provided for . . . ." La. Act 43 of 1922, § 8(2)(h).

20. ". . . but if only one parent be actually dependent on the deceased employee . . . and there be brothers and sisters and other members of the family of the deceased employee not hereinabove specifically provided for, then if any such brother or sister or other member of the family not specifically provided for was actually dependent on the deceased employee" payment is made to them. La. Act 43 of 1922, § 8(2)(g).

21. 222 La. 796, 808, 64 So. 2d 177, 181 (1953).

22. See note 19 supra. See also La. Act 216 of 1924 § 8(2)(g) and (h); La. Act 85 of 1926, § 8(2)(E)(7) and (8); Act 242 of 1928, § 8(2)(E)(7) and (8); Act 120 of 1944, § 8(2)(E)(7) and (8); Act 175 of 1948, § 8(2)(E)(7) and (8).

next succeeding class so long as maximum compensation is unabsorbed.

It is interesting to note that this problem of interpretation of death benefits schedules is not confined to Louisiana. Other states have statutes phrased similarly to our Revised Statutes 23:1232 which have been given varied constructions by their courts. Alabama,[23] for example, has held that compensation is not payable concurrently to more than one of the classes of dependent relatives.[24] Kansas,[25] on the other hand, has reached the same conclusion as the Louisiana court in the *Johnson* case.[26]

Decisions such as those in the *McDonald, Patin,* and *Johnson* cases suggest the necessity of a review of our death benefits provisions with an eye toward improvement. California and New Jersey statutes advance interesting solutions to this phase of workmen's compensation. Under California law all total dependents share equally in the maximum compensation, to the exclusion of partial dependents. If no person is wholly dependent, then the partial dependents divide the maximum compensation in proportion to the extent of their dependency.[27] The compensation act is administered by a commission which has the authority to reassign the death benefit to any one or more of the dependents, in variance of the rules above, upon good cause being shown therefor.[28] In New Jersey, computation of the amount of compensation available for distribution is based on the number of dependents and their degree of dependency.[29] Distribution of compensation is based on relative dependency

23. "If the deceased employee leaves not widow or child or husband entitled to any payment hereunder, but leaves a parent or parents, either or both of whom are wholly dependent on the deceased . . ." payment is made to the parents. "If the deceased employee leaves no widow or child or husband or parent entitled to any payment hereunder, but leaves grandparent, brother, sister, mother-in-law or father-in-law, wholly dependent on him for support . . ." then payments are "divided between or among them, share and share alike." Ala. Code 1940, Tit. 26, § 283.

24. Ex parte Todd Shipbuilding & Dry Docks Co., 103 So. 447 (Ala. 1925).

25. "'Dependents' means such members of the workman's family as were wholly or in part dependent upon the workman at the time of the accident. 'Members of a family,' for the purpose of this act, means only legal widow or husband, as the case may be, and children; or if no widow, husband, or children, then parents or grandparents; or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters." Kan. Gen. Stat. 1949, § 44-508.

26. Winchester v. Stanton-Wallace Construction Co., 124 Kan. 458, 260 Pac. 614 (1927).

27. Calif. Labor Code, § 4703.

28. Id. at § 4704.

29. N.J.S.A. 34:15-13.

and is completely within the control of the workmen's compension bureau.[30] The opportunity for individual case consideration afforded by these statutes appears more desirable than the inflexible "schedule" method of distribution used in Louisiana.

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30. Ibid.